IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 2205 of 2005

Between:

Banka Laxminarayana, s/o late Adinarayana Naidu,
r/o K.K.Rajapuram Village, Burja Mandal, Srikakulam District.

..... PETITIONER

AND

Assistant Divisional Engineer, Operation and I.T.D.A.
Eastern Power Distribution Company of A.P.Ltd., Seethampeta, Srikakulam District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ, order or direction more paticularly a writ in the nature of writ of mandamus declaring the action of the respondent in disconnecting the power supply to the Rice Mill bearing Service Connection No.10 of K.K.Rajapuram Village, Burja Mandal, Srikakulam District as illegal and arbitrary and consequently direct the respondent herein to restore the power supply forthwith and to pass such other order or orders.

Counsel for the Petitioner:MR.A.RAVI SHANKAR

Counsel for the Respondent No.: MR.V.AJAYAKUMAR

The Court, at the stage of admission, made the following :

ORDER:

The petitioner was issued an order of provisional assessment, dated 06.01.2005, pointing out that the inspection conducted on 04.01.2005 revealed pilferage of power by him. The pilfered power was estimated at Rs.3,09,469/-. Petitioner was given an option to pay half of that amount, namely, Rs.1,54,735/-, in case he wants continuance of power supply. Petitioner challenges the same.

Heard the learned counsel for the petitioner and the learned standing counsel for the respondent.

Section 126 of the Electricity Act, 2003, prescribes the procedure for determination of liability of a consumer whenever any instances of pilferage or mal-practices are noticed. An order of provisional assessment is almost in the form of a show cause notice. The actual liability would arise only after an order of final assessment is passed duly taking into account the explanation that may be offered by the consumer. Till such time, the consumer cannot be fastened with any liability. In fact, a Division Bench of this Court has taken such a view on interpretation of the relevant provisions. As of now, the petitioner is served with only an order of provisional assessment. He cannot be required to pay any amount or retained with disruption of power supply.

In that view of the matter, the writ petition is disposed of directing that the respondent shall restore power supply to the petitioner without insisting on payment of any amount as indicated in the order of provisional assessment dated 06.01.2005. The

petitioner shall be, however, liable to pay the regular consumption charges, and his liability towards the alleged pilferage shall be determined in the order of final assessment. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

Dated : 10.02.2005

Note: Furnish copy

In two days

(B/o)

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To

1 Assistant Divisional Engineer, Operation and I.T.D.A.
Eastern Power Distribution Company of A.P. Ltd, Seethampeta, Srikakulam District.

2 2CD copies.